

To amend title XIX of the social security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 3), 1989

Mr. CHAFEE (for himself, Mr. MITCHELL, Mr. DOLE, Mr. ARMSTRONG, Mr. BRADLEY, Mr. MOYNIHAN, Mr. BAUCTJS, Mr. MATSUNAGA, Mr. RIEGLE, Mr. PRYOR, Mr. ROCKEFELLER, Mr. PASCHLE, Mr. NUNN, Mr. GORE, Mr. WIETH, Mr. HOLLINGS, Mr. BURDICK, Mr. STEVENS, Mr. HARKIN, Mr. BIDEN, Mr. SHELBY, Mr. BINGAMAN, Mr. INOUE, Mr. DODD, Mr. ADAMS, Mr. LEAHY, Mr. CONRAD, Mr. HATCH, Mr. GARN, Mr. HATFIELD, Mr. HUMPHREY, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. MCCAIN, Mr. CRANSTON, Mr. MURKOWSKI, Mr. WALLOP, Mr. BURNS, Mr. THURMOND, Mr. SPECTER, Mr. KERRY, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

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**A BILL**

To amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Medicaid Home and  
3 Community Quality Services Act of 1989".

4 SEC. 2. DEFINITIONS.

5 Section 1905 of the Social Security Act is amended by  
6 adding at the end thereof the following new subsections:

7 "(r) INDIVIDUAL WITH A SEVERE DISABILITY.—

8 "(1) The term 'individual with a severe disability'  
9 means an individual who is under a disability within  
10 the meaning of section 1614(a)(3) of this Act, the onset  
11 of which occurred before the individual attained the  
12 age that applies with respect to a fiscal year (as deter-  
13 mined under paragraph (2)).

14 "(2) For purposes of paragraph (1), the age that  
15 applies with respect to a fiscal year is the lesser of—

16 "(A) 22 plus the number of fiscal years after  
17 fiscal year 1989 and before the beginning of such  
18 fiscal year; and

19 "(B) 50.

20 "(s) COMMUNITY AND FAMILY SUPPORT SERVICES.—

21 The term 'community and family support services' means  
22 supportive services made available to an individual with a  
23 severe disability (or to such individual's natural, adoptive, or  
24 foster family or spouse) to enable such individual to begin,  
25 resume, or continue living in a family home, foster family  
26 home, or community living facility. Such supportive services

1 shall include both in-home and out-of-home services (as  
2 needed) from among those enumerated in section 1921(a)(2).

3       "(t) FAMILY HOME.—The term 'family home' means a  
4 residence maintained by an individual (whether or not dis-  
5 abled) or a couple, or by a natural or adoptive family, in  
6 which one or more individuals with a severe disability are  
7 living who receive medical assistance which includes pay-  
8 ment for some services enumerated in section 1921(a)(2).

9       "(u) FOSTER FAMILY HOME.—The term 'foster family  
10 home' means a residence maintained by an individual or  
11 couple—

12               "(1) in which not more than three individuals with  
13 a severe disability are living, are provided surrogate  
14 family services, and receive medical assistance which  
15 includes payment for one or more services enumerated  
16 in section 1921(a)(2); and

17               "(2) that is under contract with an agency li-  
18 censed or designated to place individuals with a severe  
19 disability in such residence.

20       "(v) COMMUNITY LIVING FACILITY.—

21               "(1) The term 'community living facility' means a  
22 single household, other than a family home or foster  
23 family home, composed of related or unrelated persons,  
24 which—

"(B) has a number of beds (exclusive of beds occupied by staff members) not in excess of the product obtained by multiplying by three the greater of—

"(i) the number of individuals in an average family household in the area in which such facility is located (as determined in accordance with data from the 1980 decennial census), or

"(ii) the number of individuals in an average family household in such area (as determined in accordance with any decennial census conducted after the 1980 decennial census);

"(C) is located in a neighborhood which—

"(i) is representative of residential neighborhoods in such area, and

"(ii) is populated primarily by individuals other than individuals with a severe disability;

1           "(D) meets such standards of safety and  
2 sanitation, and other standards relating to services  
3 provided by the facility, as are promulgated by  
4 the State;

5           "(E) meets the requirements of section  
6 1861(j)(14) of this Act with respect to the person-  
7 al funds of individuals residing in such facility;  
8 and

9           "(F) is staffed by individuals who (i) are  
10 trained or retrained in accordance with the provi-  
11 sions of the State implementation strategy (sub-  
12 mitted to the Secretary under section 1921(c)(1))  
13 by the State in which such facility is located, and  
14 (ii) in providing such living arrangements and  
15 services to individuals with a severe disability, co-  
16 operate with other providers and with appropriate  
17 case managers in implementing a written habilita-  
18 tion plan for each such individual.

19       "(2) A facility that—

20           "(A) was in operation on September 30,  
21 1989;

22           "(B) does not increase its number of beds  
23 after such date (exclusive of beds occupied by staff  
24 members); and

1           "(C)(i) does not contain more than fifteen  
2           beds (exclusive of beds occupied by staff mem-  
3           bers), or

4           "(ii) consists of a cluster of two or three fa-  
5           cilities in proximity to one another, each of which  
6           has no more than eight beds and which otherwise  
7           meets the requirements of paragraph (1);

8           shall be treated as a community living facility.

9           "(w) WRITTEN HABILITATION PLAN.—The term  
10          'written habilitation plan' means a plan for medical assistance  
11          and other services for an individual with a severe disability  
12          which—

13               "(1) is developed by an interdisciplinary team con-  
14               sisting of—

15                       "(A) such individual, persons requested to  
16                       participate by the individual, and, when appropri-  
17                       ate, the spouse, parent, guardian, other family  
18                       member, or advocate of such individual, and

19                       "(B) individuals who are representative of  
20                       professional and other disciplines which are rele-  
21                       vant to the habilitation of such individual, and  
22                       have been involved in providing services to the in-  
23                       dividual or are likely to be involved in providing  
24                       services to the individual (including the individuals

25               responsible for providing case management serv



1 ioral terms that provide measurable indices of  
2 performance,

3 "(C) the dates by which the particular objec-  
4 tives are to be achieved,

5 "(D) the services and program strategies for  
6 achieving the specific objectives, and

7 "(E) the priority with which the specific ob-  
8 jectives are to be achieved; and

9 "(4) is reevaluated by such team at least once  
10 each year.

11 "(x) CASE MANAGEMENT SERVICES.—The term 'case  
12 management services' means, with respect to any individual  
13 with a severe disability, services rendered to such individual  
14 by a designated qualified individual who—

15 "(1) has a continuing relationship with such indi-  
16 vidual but who is neither associated with nor employed  
17 by (nor has any other conflict of interest with respect  
18 to) the community living facility, foster family home,  
19 family home, or any other provider of ongoing direct  
20 services to such individual;

21 "(2) coordinates and monitors the development  
22 and implementation of the written habilitation plan for  
23 such individual;

24 "(3) provides such individual (or such individual's  
25 spouse, parent, guardian, other family member, or ad-



1       vocate, as appropriate) with information about, and re-  
2       ferral to, appropriate social, educational, vocational,  
3       medical, advocacy, or other services which are among  
4       or in addition to those for which payment may be made  
5       under this title;

6               "(4) provides assistance and serves as an advocate  
7       in procuring such services as necessary;

8               "(5) periodically reviews the changing needs of  
9       such individual and the appropriateness of the medical  
10       assistance and other services provided to such  
11       individual;

12               "(6) cooperates with personnel in school, employ-  
13       ment related, habilitation, or treatment settings who  
14       have specific responsibilities for developing or imple-  
15       menting any individual education plan, plan of voca-  
16       tional services, plan of habilitation, or plan of treat-  
17       ment designed for such individual, so that all such  
18       plans are coordinated and complementary; and

19               "(7) is available to such individual or such individ-  
20       ual's family for consultation or crisis intervention when  
21       required.

22       "(y) INDIVIDUAL AND FAMILY SUPPORT SERVICES.—

23       The term 'individual and family support services' means—

24               "(1) those services provided to an individual with  
25       a severe disability which the individual's interdiscipli-

1 nary team (described in subsection (w)(l)) determines  
2 are appropriate for carrying out those activities of daily  
3 living which the individual cannot perform for himself,  
4 including non-medical personal assistance, attendant  
5 services, assistance in ambulating or transferring, limit-  
6 ed domestic services, and assistance with assistive de-  
7 vices and communicative devices and aids; and

8 "(2) services provided to the family of an individ-  
9 ual with a severe disability which the individual's inter-  
10 disciplinary team determines are appropriate for assist-  
11 ing the family in providing services described in para-  
12 graph (1) to the individual, including respite care.

13 "(z) SPECIALIZED VOCATIONAL SERVICES.—

14 "(1) The term 'specialized vocational services'  
15 means services designed to enhance the independence,  
16 productivity, and integration of an individual with a  
17 severe disability, including—

18 "(A) prevocational services for such an indi-  
19 vidual whose earning capacity (as determined on  
20 the basis of a current vocational assessment or  
21 other objective measure of work performance) is  
22 less than 50 percent of the minimum wage estab-  
23 lished under section 14(c) of the Fair Labor  
24 Standards Act of 1938; and

1           "(B) supported employment services for such  
2           an individual for whom competitive employment—

3                       "(i) has not traditionally occurred, or

4                       "(ii) has been interrupted or intermittent  
5                       as a result of such disability (and for whom  
6                       ongoing support services are needed to per-  
7                       form such employment).

8           "(2) For purposes of paragraph (1)—

9                       "(A) the term 'prevocational services' means  
10                      services that are designed to assist an individual  
11                      in acquiring and maintaining basic work and  
12                      work-related skills necessary to acquire and retain  
13                      work in an integrated work setting, which serv-  
14                      ices shall include—

15                      "(i) training the individual to follow di-  
16                      rections, adapt to work routines, and carry  
17                      out assigned duties in an effective and effi-  
18                      cient manner,

19                      "(ii) helping the individual to acquire  
20                      appropriate attitudes and work habits, includ-  
21                      ing instruction in socially-appropriate behav-  
22                      iors on and off the job site,

23                      "(iii) assisting the individual to adjust to  
24                      the productive and social demands of the  
25                      work place,

1           "(iv) familiarizing the individual with  
2           job production and performance require-  
3           ments,

4           "(v) providing transportation between  
5           the individual's place of residence and the  
6           workplace when other forms of transporta-  
7           tion are unavailable or inaccessible,

8           "(vi) providing mobility training, includ-  
9           ing the utilization of public and Para transit  
10          systems,

11          "(vii) training the individual in the use  
12          of assistive devices and aids, and

13          "(viii) instructing individuals in appro-  
14          priate use of job-related facilities (e.g., break  
15          areas, lunch rooms, cafeterias and rest  
16          rooms); and

17          "(B) the term 'supported employment serv-  
18          ices' means services designed to assist an individ-  
19          ual in procuring and maintaining integrated, paid  
20          employment, which services shall include—

21                "(i) individualized assessment,

22                "(ii) individualized and group counsel-  
23                ing,

24                "(iii) individualized job development and  
25                placement services that produce an appropri-

1           ate job match for the individual and such in-  
2           dividual's employer,

3           "(iv) on-the-job training in work and  
4           work-related skills required to perform the  
5           job,

6           "(v) ongoing supervision and monitoring  
7           of the individual's performance on the job,

8           "(vi) ongoing support services necessary  
9           to assure job retention,

10          "(vii) training in related skills essential  
11          to obtaining and retaining employment, such  
12          as the effective use of community resources  
13          and transportation,

14          "(viii) transportation between the indi-  
15          vidual's place of residence and the work  
16          place when other forms of transportation are  
17          unavailable or inaccessible, and

18          "(ix) adaptive equipment necessary to  
19          obtain and retain employment.

20       "(aa) HABILITATION SERVICES.—

21               "(1) Subject to paragraph (2), the term 'habilita-  
22       tion services' means those services (including special-  
23       ized vocational services and educationally-related

serv-

24       ices) provided to an individual with a severe disability  
25       which the individual's interdisciplinary team (described

1 in subsection (w)(1)) determines are appropriate in as-  
2 sisting the individual to acquire, retain, regain, or im-  
3 prove the self-help, socialization, decision making, and  
4 adaptive skills necessary to achieve independence, pro-  
5 ductivity, and integration and to live successfully in  
6 home and community based settings.

7 "(2) The term 'habilitation services' does not  
8 include—

9 "(A) special education services (as defined in  
10 section 602(16) of the Education of the Handi-  
11 capped Act) which otherwise are available to the  
12 individual through a local educational agency; and

13 "(B) vocational rehabilitation services which  
14 otherwise are provided to the individual through a  
15 program funded under section 110 or 633 of the  
16 Rehabilitation Act of 1973.

17 "(bb) CASE COORDINATION SERVICES.—The term  
18 'case coordination services' means, with respect to any indi-  
19 vidual with a severe disability, services rendered to such indi-  
20 vidual by a designated qualified individual who—

21 "(1) is employed by an agency directly responsible  
22 for providing habilitation services to such individual;  
23 and

24 "(2) in cooperation with the individual responsible  
25 for providing case management services, is responsible

1 for coordinating the agency's responsibilities for imple-  
2 menting such individual's written habilitation plan.

3 "(cc) EDUCATIONALLY-RELATED SERVICES.—The  
4 term 'educationally-related services' means, with respect to  
5 an individual with a severe disability who is eligible to re-  
6 ceive services under parts B and H of the Education of the  
7 Handicapped Act, services covered as medical assistance  
8 under the State plan and required by such individual in order  
9 to receive a free appropriate public education (as defined in  
10 section 602(18) of such Act) or appropriate early intervention  
11 services (as defined in section 672(2) of such Act), including  
12 those services appropriate in assisting the individual to ac-  
13 quire, retain, regain, or improve the self-help, socialization,  
14 decision making, and adaptive skills necessary to achieve in-  
15 dependence, productivity and integration.

16 "(dd) ASSISTIVE TECHNOLOGY.—The term 'assistive  
17 technology' means the systematic application of technology,  
18 engineering methodologies, or scientific principles to meet the  
19 needs and address the barriers confronted by an individual  
20 with a severe disability (including physical, sensory, and cog-  
21 nitive functional limitations in such areas as employment,  
22 recreation, independent living and other home and communi-  
23 ty living arrangements).

24 "(ee) INDEPENDENCE, PRODUCTIVITY, AND INTEGRA-  
25 TION.—The terms 'independence, 'productivity, and 'inte-

1 gration' when used in reference to the provision of communi-  
2 ty and family support services under this title have the same  
3 meaning with respect to individuals with a severe disability  
4 as the meaning given to such terms with respect to persons  
5 with developmental disabilities in section 102 of Develop-  
6 mental Disabilities Assistance and Bill of Rights Act."

7 SEC. 3. COMMUNITY AND FAMILY SUPPORT SERVICES FOR  
8 CERTAIN INDIVIDUALS WITH A SEVERE DIS-  
9 ABILITY.

10 (a) STATE PLAN REQUIREMENT.—Section 1902(a) of  
11 the Social Security Act is amended—

12 (1) by striking "and" at the end of paragraph  
13 (46);

14 (2) by striking the period at the end of paragraph  
15 (47) added by section 9407(a) of the Omnibus Budget  
16 Reconciliation Act of 1986 and inserting a semicolon  
17 and transferring and inserting such paragraph after  
18 paragraph (46);

19 (3) by striking the period at the end of the para-  
20 graph (47) added by section 11005(b) of the Anti-Drug  
21 Abuse Act of 1986 and inserting "; and", by redesign-  
22 ating such paragraph as paragraph (48), and by trans-  
23 ferring and inserting such paragraph after paragraph  
24 (47); and



1           (4) by inserting after paragraph (48) the following  
2       new paragraph:

3       "(49) effective not later than the first day of the second  
4       fiscal year beginning after the date of enactment of the Med-  
5       icaid Home and Community Quality Services Act of 1989,  
6       provide that with respect to any individual with a severe dis-  
7       ability who is entitled to medical assistance under such plan  
8       and who resides in a family home, foster family home, or  
9       community living facility, such assistance shall include an  
10      array of community and family support services which the  
11      State determines are appropriate, when combined with other  
12      medical assistance available under the plan and with other  
13      available resources, to assist in providing for the health,  
14      safety, and effective habilitation or rehabilitation of such indi-  
15      vidual, including at a minimum case management services,  
16      individual and family support services, specialized vocational  
17      services, and protective intervention."

18       (b) INCLUSION AS MEDICAL ASSISTANCE.—Section  
19      1905(a)(13) of such Act is amended by inserting before the  
20      semicolon at the end thereof the following: ", including com-  
21      munity and family support services for individuals with a  
22      severe disability".

23       (c) SERVICES FOR INDIVIDUALS WITH A SEVERE DIS-  
24      ABILITY.—Title XIX of such Act is amended—

1 (1) by re-designating section 1921 as section 1922;

2 and

3 (2) by inserting after section 1920 the following

4 new section:

5 "MEDICAL ASSISTANCE, HABILITATION, AND REHABILITA-

6 TION FOR INDIVIDUALS WITH A SEVERE DISABILITY

7 "SEC. 1921. (a) COMMUNITY AND FAMILY SUPPORT

8 SERVICES.—

9 "(1) For purposes of section 1903, amounts ex-

10 pended by a State under its State plan for community

11 and family support services may be included as medical

12 assistance if such services are provided—

13 "(A) to an individual with a severe disability

14 residing in a family home, foster family home, or

15 community living facility, and

16 "(B) in accordance with the individual's writ-

17 ten habilitation plan.

18 "(2) The following types of services may be in-

19 eluded as community and family support services:

20 "(A) Case management services (as defined

21 in section 1905(x)).

22 "(B) Individual and family support services

23 (as defined in section 1905(y)).

24 "(C) Specialized vocational services (as de-

25 fined in section 1905(z)).

26 "(D) Protective intervention.

1           "(E) Habilitation services (as defined in sec-  
2           tion 1905(aa)).

3           "(F) Case coordination services (as defined in  
4           section 1905(bb)).

5           "(G) Educationally-related services (as de-  
6           fined in section 1905(cc)).

7           "(H) Periodic interdisciplinary diagnostic and  
8           assessment services.

9           "(I) Personal assistance and attendant care.

10          "(J) Domestic assistance necessitated by the  
11          individual's disability.

12          "(K) Services to enable the individual to im-  
13          prove or maintain functional capacities (including  
14          physical therapy, occupational therapy, speech  
15          and language pathology and audiology, respiratory  
16          therapy, and non-aversive behavior intervention  
17          therapy).

18          "(L) Prostheses, orthoses, supplies, appli-  
19          ances, adaptive equipment, communicative aids,  
20          and other functional assistive technologies and de-  
21          vices (including sensory aids) and rehabilitative  
22          technology services to evaluate, design, assemble,  
23          repair, and maintain such equipment, aids, assis-  
24          tive devices, and systems and to train the individ-  
25          ual, family, and provider agency staff in their use.

1           "(M) Preventive and therapeutic dental  
2 services.

3           "(N) Design and necessary and reasonable  
4 adaptation or modification of equipment and vehi-  
5 cles, and of housing or other space, to be used by  
6 an individual With a severe disability.

7           "(O) Comprehensive outpatient rehabilitation  
8 facility services.

9           "(P) Purchase and maintenance of guide  
10 dogs and similar trained animals.

11           "(Q) Services (other than board, lodging, and  
12 basic foster care) provided to any individual with  
13 a severe disability by members of a family or  
14 household in which such individual is living.

15           "(R) Support services to families and care-  
16 givers, including specialized training and respite  
17 care in or out of the home or usual residence.

18           "(S) Special transportation services.

19           "(T) Homemaker and home health services.

20           "(U) Chore services.

21           "(V) Crisis intervention.

22           "(W) Personal guidance, supervision, coun-  
23 seling, representation, and advocacy.

1           "(X) Appropriate preventive services to de-  
2           crease the needs of individuals with a severe dis-  
3           ability for future services.

4           "(Y) Any other services identified by the  
5           State and approved by the Secretary as conform-  
6           ing with the purposes of this section.

7           "(3) The following services may not be included  
8           as community and family support services:

9           "(A) Room and board, other than room and  
10          board provided for less than six consecutive weeks  
11          and less than twelve weeks in a year as an inte-  
12          gral but subordinate part of a service described in  
13          paragraph (2). However, auxiliary payments may  
14          be made as medical assistance to cover extraordi-  
15          nary costs of food or housing attributable to the  
16          disabling condition of a particular individual or  
17          individuals.

18          "(B) Any service for which payment is made  
19          under section 403 or 422 of this Act.

20          "(C) Cash payments as a service.

21          "(D) Aversive behavior intervention, man-  
22          agement, or therapies.

23          "(E) Any service to any individual to the  
24          extent that the provider of the service or the indi-  
25          vidual receiving the service is eligible to receive

1 payment under title XVIII with respect to the  
2 provision of the service.

3 "(F) Any educational service which the State  
4 makes generally available to its residents without  
5 cost and without regard to their income except for  
6 educationally-related services (as defined in sec-  
7 tion 1905(cc)).

8 "(G) Any service to any individual with a  
9 severe disability living in any hospital, skilled  
10 nursing facility, or intermediate care facility (in-  
11 eluding any such hospital or facility for mental  
12 diseases).

13 "(4) Amounts expended by the State or by a pro-  
14 vider of services to administer the provision of commu-  
15 nity and family support services pursuant to this sec-  
16 tion shall be treated as administrative costs of the  
17 State plan.

18 "(b) SERVICES ARE IN ADDITION TO OTHER MEDICAL  
19 ASSISTANCE.—Community and family support services pro-  
20 vided pursuant to this section shall be in addition to any other  
21 medical assistance for which an individual with a severe dis-  
22 ability is otherwise eligible under the State plan.

23 "(c) STATE REQUIREMENTS.—In order to receive pay-  
24 ment under section 1903 with respect to community and  
25 family support services provided under the State plan to any

1 eligible individual with a severe disability, such plan shall  
2 provide that the State—

3           "(1) submit to the Secretary a State implementa-  
4 tion strategy (as described in subsection (d)) that is an-  
5 nually reviewed and updated (as appropriate);

6           "(2) ensure that community living facilities are  
7 not unduly concentrated in any residential area (except  
8 as provided in section 1905(v)(2));

9           "(3) report to the Secretary on the implementa-  
10 tion of the State's implementation strategy (submitted  
11 to the Secretary under paragraph (1)) in such form and  
12 with such frequency as the Secretary may prescribe  
13 and comply with the requests of the Secretary to cor-  
14 rect or verify such report;

15           "(4) cooperate with the Secretary in carrying out  
16 the Secretary's responsibility (under section 11 (d) of  
17 the Medicaid Home and Community Quality Services  
18 Act of 1989) to assess the State's compliance with its  
19 State implementation strategy (submitted to the Secre-  
20 tary under paragraph (1)), including making available  
21 to the Secretary such records as the Secretary may  
22 reasonably require to assess such compliance;

23           "(5) promulgate standards governing each element  
24 of community and family support services covered  
25 under its plan, monitor on an annual basis all providers

1 of such services to assure that such providers comply  
2 with applicable standards, and take necessary steps to  
3 assure that such standards are promptly and effectively  
4 enforced;

5 "(6) meet the maintenance of effort requirement  
6 described in subsection (e);

7 "(7) safeguard the rights of all individuals with a  
8 severe disability who are participating in services for  
9 which payment is made under this title;

10 "(8) ensure that individuals with a severe disabili-  
11 ty are granted equal access to available community  
12 and family support services without regard to their  
13 place of residence or the nature or degree of their  
14 disability;

15 "(9) ensure that any individual with a severe dis-  
16 ability for whom a public agency (or an agency under  
17 contract with a public agency) arranges a residential  
18 placement is placed in a foster family home or commu-  
19 nity living facility that is located as close to the home  
20 of the natural, adoptive, or foster family of the individ-  
21 ual as is consistent with the best interests of the indi-  
22 vidual; and

23 "(10) ensure that in the case of any individual  
24 with a severe disability who has attained the age of 18  
25 for whom a public agency (or an agency under contract



1 with a public agency) arranges specialized vocational  
2 services for which payment is made under this title,  
3 priority will be given to providing such services in an  
4 integrated work environment.

5 "(d) STATE IMPLEMENTATION STRATEGY.—The State  
6 implementation strategy submitted to the Secretary under  
7 subsection (c)(1) shall—

8 "(1)(A) describe—

9 "(i) the extent and scope of community and  
10 family support services provided to individuals  
11 with a severe disability which are financed (in  
12 whole or in part) under—

13 "(I) the State's plan under this title,

14 "(II) other Federal or Federally-assisted  
15 State programs or social entitlement pro-  
16 grams, and

17 "(HI) non-Federal sources, and

18 "(ii) the extent and scope of services provid-  
19 ed to individuals with a severe disability who are  
20 residing in a facility that is an acute care hospital,  
21 a skilled nursing facility, an intermediate care fa-  
22 cility (including a facility that is certified in ac-  
23 cordance with section 1905(d)), a board and care  
24 facility, or other public or private facility having  
25 16 or more beds and in which a significant

1           number of recipients of supplemental security  
2           income benefits reside or are likely to reside,  
3           which are so financed;

4           "(B) set forth specific objectives and a projected  
5           schedule for expanding and improving community and  
6           family support services for individuals with a severe  
7           disability over the succeeding five-year period, which  
8           objectives shall outline the expansion in the number of  
9           individuals served and community and family support  
10          services provided and identify the extent to which such  
11          services will be financed under the State's plan under  
12          this title and from other funding sources;

13          "(C) in the case of any individual with a severe  
14          disability who is residing in a facility described in sub-  
15          paragraph (A)(ii), provide that—

16                 "(i) the service needs of such individual and  
17                 the types of services the individual would require  
18                 if transferred to a family home, foster family  
19                 home, or community living facility, are identified  
20                 not later than 18 months after the date on which  
21                 community and family support services are first  
22                 covered under the State plan (and annually there-  
23                 after), and

24                 "(ii) such individual and, as appropriate, such  
25                 individual's spouse, parent, guardian, appropriate

1 family member, or advocate, are afforded an op-  
2 portunity to participate in the process under  
3 clause (i);

4 "(D) in the case of any individual with a severe  
5 disability who is residing in a skilled nursing facility or  
6 an intermediate care facility (other than a facility that  
7 is certified in accordance with section 1905(d)) and  
8 who is determined (in accordance with sub paragraph  
9 (C)) to be in need of alternative residential placement,  
10 provided that (subject to sub paragraph (F)) such indi-  
11 vidual is transferred from such facility not later than  
12 40 months after the date on which the process de-  
13 scribed in sub paragraph (C) is completed with respect  
14 to such individual;

15 "(E) set forth specific objectives and a projected  
16 schedule, over the succeeding five-year period, for  
17 transferring individuals with a severe disability (who  
18 are residing in a facility described in sub paragraph  
19 (A)(ii) and are not transferred pursuant to sub para-  
20 graph (D)) to more appropriate residential settings  
21 where they will be eligible to receive community and  
22 family support services;

23 "(F) provide that in transferring any individual  
24 with a severe disability from a facility described in sub-  
25 paragraph (A)(ii)—

1           "(i) such individual is transferred only to a  
2           facility or program that is capable of providing an  
3           appropriate array of community and family sup-  
4           port services (or in the case of an individual trans-  
5           ferred to a facility certified in accordance with  
6           section 1905(d), active treatment) consistent with  
7           such individual's written habilitation plan,

8           "(ii) priority is given to transferring such in-  
9           dividual to a family home, foster family home, or  
10          community living facility (including a facility certi-  
11          fied in accordance with section 1905(d) that either  
12          meets the size and locational requirements for a  
13          community living facility under section 1905(v)(1)  
14          or is treated as such a facility under section  
15          1905(v)(2)),

16          "(iii) to the extent the services required by  
17          the individual are unavailable in the community in  
18          which such individual would otherwise reside,  
19          such individual is transferred to a facility certified  
20          under section 1905(d) that serves 16 or more indi-  
21          viduals with a severe disability, and

22          "(iv) in the case of an individual transferred  
23          pursuant to sub paragraph (D), during any period  
24          of time during which the individual is awaiting  
25          transfer the individual is furnished active treat-

1           ment consistent with such individual's written ha-  
2           bilitation plan; and

3           "(G) provide that prior to transfer of any individ-  
4           ual with a severe disability from a skilled nursing facil-  
5           ity, an intermediate care facility, or a board and care  
6           facility to a family home, foster family home, or com-  
7           munity living facility deemed to be capable of meeting  
8           the individual's needs—

9           "(i) a community services transfer plan is de-  
10          veloped through a process which—

11                 "(I) identifies the specific community  
12                 and family support services, as well as other  
13                 services, that such individual will require and  
14                 will have available when such individual is  
15                 transferred to a family home, foster family  
16                 home, or community living facility,

17                 "(II) involves the interdisciplinary team  
18                 (or other professional group) responsible for  
19                 the written habilitation plan with respect to  
20                 such individual while residing in the facility  
21                 from which transfer is to be made, and the  
22                 professional responsible for providing case  
23                 management services and other appropriate  
24                 professional personnel who are likely to be

1 involved in providing services to the individ-  
2 ual in the community, and

3 "(HI) provides to the individual and, as  
4 appropriate, to such individual's spouse,  
5 parent, guardian, appropriate family member,  
6 or advocate, an opportunity to participate in  
7 developing such plan;

8 "(ii)(I) such individual and such individual's  
9 spouse, parent, guardian, appropriate family  
10 member, or advocate, are notified in writing at  
11 least 60 days before the date of any proposed  
12 transfer,

13 "(II) procedures are established for granting  
14 to such individual (or, as appropriate, to such indi-  
15 vidual's spouse, parent, guardian, appropriate  
16 family member, or advocate) an opportunity for an  
17 appeal regarding the transfer plan developed  
18 under clause (i) with respect to the individual, and  
19 for a fair hearing before an impartial hearing offi-  
20 cer designated by the State, on the grounds that  
21 the types of health related services, habilitation,  
22 rehabilitation, housing, or other services specified  
23 in the community services transfer plan developed  
24 with respect to such individual are inappropriate  
25 or inadequate, or a particular type of health relat

1 ed service, habilitation, rehabilitation, housing, or  
2 other service specified in such plan is not yet  
3 available in the area in which such individual will  
4 reside, and

5 "(III) if such individual initiates an appeal  
6 under sub clause (II), the individual remains in the  
7 facility from which such individual is to be trans-  
8 ferred pending the outcome of the appeal (unless  
9 protective intervention is determined to be neces-  
10 sary with respect to the individual);

11 "(2) provide that, not later than 18 months after  
12 the date on which community and family support serv-  
13 ices are first covered under the State plan, the State  
14 has in place a preadmission screening program (using  
15 criteria specified by the Secretary) to prevent the inap-  
16 propriate placement of individuals with a severe dis-  
17 ability in skilled nursing facilities and intermediate care  
18 facilities (other than facilities certified under section  
19 1905(d));

20 "(3) set forth—

21 "(A)(i) the component parts of a comprehen-  
22 sive, integrated quality assurance system that af-  
23 fords individuals with a severe disability expanded  
24 opportunities for independence, productivity, and  
25 integration and which includes standards to

1 govern the quality of each element of community  
2 and family support services covered under the  
3 State plan, as well as each class of residential fa-  
4 cilities or living arrangements (except for a family  
5 home) in which a significant number of individuals  
6 with a severe disability reside, which standards  
7 assure that such services—

8 "(I) are based on timely assessments of  
9 the individual's needs and are organized sys-  
10 tematically to assure optimal individual de-  
11 velopment, independent functioning, produc-  
12 tivity, and community integration,

13 "(II) are furnished in accordance with  
14 the provisions of the individual's written ha-  
15 bilitation plan and reflect the strengths of the  
16 individual and the services necessary to  
17 assist the individual to achieve more inde-  
18 pendent functioning with respect to health  
19 and physical development, receptive and ex-  
20 pressive communication, cognitive learning,  
21 mobility, self-direction, socialization, leisure  
22 time, and vocational activities,

23 "(HI) are provided in a manner that  
24 maximizes opportunities for and fosters the  
25 development of relationships between the in-



1 individual and other members of the commu-  
2 nity (including individuals who are not  
3 disabled),

4 "(IV) are provided in the home or at  
5 school, a job site, or other community setting  
6 where existing and newly acquired skills can  
7 be put to practical use,

8 "(V) are designed to ensure that (if the  
9 individual resides in a community living facil-  
10 ity) services, other than residentially-related  
11 services, are provided in settings other than  
12 the facility in which the individual resides  
13 (unless medically contra-indicated), and

14 "(VI) are designed to assist the individ-  
15 ual to acquire the functional life skills neces-  
16 sary to enhance the capacity of the individual  
17 to achieve independent living, to integrate  
18 into the community, to increase productivity,  
19 and to socially interact with individuals who  
20 are not disabled;

21 "(ii) the methods and procedures to be used  
22 in instituting and maintaining the quality assur-  
23 ance system described in sub paragraph (A), and

24 "(iii) the methods and procedures for—

1           "(I) providing the same opportunity for  
2           public input with respect to the standards de-  
3           veloped under such system as exists under  
4           the State plan amendment process,

5           "(II) requiring review of such standards  
6           by the State Planning Council established  
7           under section 124 of the Developmental Dis-  
8           abilities Assistance and Bill of Rights Act  
9           and the protection and advocacy system es-  
10          tablished under section 142 of such Act, and

11          "(III) responding to any comments  
12          made by such Council, such protection and  
13          advocacy system, and the public with respect  
14          to such standards;

15          "(B)(i) a program for licensing and certifying  
16          all facilities and programs that provide community  
17          and family support services covered under the  
18          State plan, which program, at the option of the  
19          State, may include a requirement that a class or  
20          classes of facilities or programs are accredited by  
21          a national accrediting body that is designated by  
22          the Secretary, and

23          "(ii) a requirement that all physical struc-  
24          tures (other than a family home) in which individ-  
25          uals with a severe disability reside, or in which

1 community and family support services are provid-  
2 ed, meet applicable State or local fire, safety,  
3 health, and sanitation codes, and have interior and  
4 exterior features that are comparable to other res-  
5 idential structures in the surrounding neighbor-  
6 hood;

7 "(C) a system for conducting an annual inde-  
8 pendent, third-party evaluation of a cross-section  
9 of community and family support services provid-  
10 ed under the State plan, which system shall in-  
11 clude (at a minimum)—

12 "(i) an analysis and validation of client-  
13 based data,

14 "(ii) periodic visits to a statistically  
15 valid sample of agencies or individuals pro-  
16 viding such services,

17 "(iii) an assessment (conducted with re-  
18 spect to a statistically valid sample of indi-  
19 viduals with a severe disability and, where  
20 available, through the use of valid and reli-  
21 able instruments) to determine the extent to  
22 which the services contribute to reduced de-  
23 pendency, enhanced opportunities to make  
24 choices, the acquisition of positive social be-  
25 haviors, improved social integration and par-

1 participation in community life, increased pro-  
2 ductivity, consumer satisfaction, the physical  
3 comfort of the individual and the attractive-  
4 ness and appropriateness (in view of the indi-  
5 vidual's age) of such individual's living envi-  
6 ronment, and the achievement of the written  
7 goals and objectives set forth in the individ-  
8 ual's written habilitation plan, and

9 "(iv) a summary of findings and recom-  
10 mendations with respect to needed changes  
11 in State laws and the administrative policies  
12 and practices of responsible State and local  
13 agencies (and any other provider of such  
14 services);

15 "(D) an annual assessment of consumer sat-  
16 isfaction with community and family support serv-  
17 ices provided under the State plan;

18 "(E) a program of periodic assessments of  
19 the adequacy of the physical and social environ-  
20 ment of residential settings serving individuals  
21 with a severe disability conducted by a review  
22 body composed of parents, guardians, relatives, or  
23 neighbors of such individuals, except that—

1           "(i) the parents, guardians, and relatives  
2           of such individuals shall comprise a majority  
3           of the body,

4           "(ii) no member of the body shall be af-  
5           filiated with the facility or home being re-  
6           viewed or with any agency responsible for  
7           providing funds with respect to such facility  
8           or home, and

9           "(iii) no member of the body shall take  
10          part in an assessment with respect to any in-  
11          dividual with a severe disability if such  
12          member is a parent, guardian, or relative of  
13          such individual;

14          "(F) a systematic methodology for assuring  
15          prompt correction of any deficiency identified with  
16          respect to the provision of community and family  
17          support services under the State plan, which  
18          methodology shall include—

19                "(i) a procedure under which the affect-  
20                ed entity may appeal a determination that  
21                there is such a deficiency,

22                "(ii) a requirement that any such entity  
23                with respect to which a deficiency is identi-  
24                fied submit a plan of correction to the appro-  
25                priate State agency which sets forth a sched-

1                   ule for promptly eliminating the deficiency,  
2                   and  
3                   "(iii) a program for providing training  
4                   and technical assistance to assist such entity  
5                   in eliminating a deficiency; and  
6                   "(G) a hierarchy of penalties with respect to  
7                   any such entity that fails to comply with any  
8                   standard promulgated pursuant to sub paragraph  
9                   (A) (including a penalty for terminating such enti-  
10                  ty's participation in the program under this title);  
11                  "(4)(A) in the case of individuals with a severe  
12                  disability who are living in residential facilities which  
13                  are not family homes, foster family homes, community  
14                  living facilities, provide that—  
15                  "(i) admissions to such residential facilities  
16                  are restricted through the use of community and  
17                  family support services, and  
18                  "(ii) the service needs of any such individual  
19                  are identified in accordance with paragraph (1)(C);  
20                  "(B) provide that alternate provisions are made  
21                  for (and priority given to the development of) appropri-  
22                  ate care (including basic maintenance if needed) and  
23                  services for any individual with a severe disability eli-  
24                  gible for medical assistance who has been living in a  
25                  facility or institution which has been receiving pay-

1       ments for care, treatment, or maintenance of such indi-  
2       vidual under this title and which ceases to receive such  
3       payments, or ceases to provide such care and services  
4       to such individual, other than at the request of the in-  
5       dividual or such individual's representative; and

6               "(C) set forth procedures for ensuring continuity  
7       of funding and the provision of services to an individual  
8       with a severe disability when an entity providing serv-  
9       ices to such individual for which payment is made  
10      under this title voluntarily discontinues operations or is  
11      terminated in accordance with paragraph (3)(G);

12              "(5)(A) provide that, as part of a plan to afford  
13      the public an adequate opportunity to comment on the  
14      State's implementation strategy (submitted to the Sec-  
15      retary under subsection (c)(1)) prior to when such strat-  
16      egy is submitted to the Secretary (or prior to each  
17      annual revision)—

18                      "(i) copies of such strategy are distributed to  
19                      individuals, agencies, and organizations in the  
20                      State that are interested in the welfare of individ-  
21                      uals with a severe disability,

22                      "(ii) such individuals, agencies, and organiza-  
23                      tions are afforded not less than 45 days to com-  
24                      ment on the strategy,

1           "(iii) public hearings are conducted on the  
2           contents of the strategy (and the date of any such  
3           hearing is published in general circulation newspa-  
4           pers across the State not less than 10 days prior  
5           to the hearing),

6           "(iv) the comments of the State Planning  
7           Council established under section 124 of the De-  
8           velopmental Disabilities Assistance and Bill of  
9           Rights Act and the protection and advocacy  
10          system established under section 142 of such Act  
11          are solicited, and

12          "(v) a summary of the comments received  
13          from the general public, such Council, and such  
14          protection and advocacy system, is prepared, indi-  
15          cating any revisions made as a result of such  
16          comments (or explaining why such revisions were  
17          not made);

18          "(B) set forth the methods and procedures to be  
19          used to ensure that, with respect to every organization  
20          or agency responsible for providing services to individ-  
21          uals with a severe disability for which any payment is  
22          made under this title—

23                 "(i) each member of the staff of such organi-  
24                 zation or agency is fully qualified to perform any  
25                 assigned duty and has received or will receive



1 adequate and continuing training or retraining in  
2 the provision of services to such individuals suffi-  
3 cient to allow such member to remain informed of  
4 the latest developments in serving such individ-  
5 uals and to assist the organization or agency in  
6 correcting any deficiencies in the provision of  
7 community and family support services under this  
8 section,

9 "(ii) such agency or organization maintains  
10 written personnel policies, and

11 "(ui) such agency or organization has access  
12 to needed technical assistance services;

13, "(C) set forth the methods and procedures to  
14 ensure that any entity responsible for providing protec-  
15 tive intervention services to an individual with a severe  
16 disability or to an individual who is (or except for such  
17 individual's income and resources would be) eligible to  
18 receive such services under this section—

19 "(i) has daily, 24-hour access to every orga-  
20 nization or agency responsible for providing serv-  
21 ices to such an individual for which any payment  
22 is made under this title,

23 "(ii) is independent of each such organization  
24 or agency, and

1           "(in) has the legal capacity to intervene on  
2           behalf of such an individual when necessary to  
3           protect such individual's rights;

4           "(D) set forth the methods by which training and  
5           needed technical assistance services are made available  
6           to natural, adoptive, and foster parents of individuals  
7           with a severe disability who are eligible for medical  
8           assistance;

9           "(E) set forth the methods by which protective  
10           intervention services are made available, as necessary,  
11           to any individual with a severe disability who is, or  
12           would except for such individual's income or resources  
13           be, eligible to receive services under this title;

14           "(F) set forth the steps by which the State en-  
15           sures that each individual with a severe disability re-  
16           ceiving community and family support services under  
17           the State plan has access to case management services  
18           which are provided—

"(i) by an entity that is organizationally independent of (and free of any conflict of interest with respect to) any entity furnishing ongoing direct services to individuals with a severe disability,

24 "(ii) with sufficient frequency and intensity to

25 ensure that the objectives in an individual's writ

1           ten habilitation plan are achieved within the  
2           period of time specified in such plan, and

3                 "(iii) by a trained individual with a caseload  
4           capability to visit each individual under such indi-  
5           vidual's responsibility not less than once a month;

6           "(G) provide that the State has in effect a man-  
7           agement information system capable of collecting, stor-  
8           ing, and retrieving data with respect to individuals  
9           with a severe disability who receive (or who are eligi-  
10          ble to receive) community and family support services  
11          under this section, which system shall—

12                 "(i) be based on information derived from an  
13          individual's written habilitation plan or from any  
14          other needs-assessment data source,

15                 "(ii) provide client-based data with respect to  
16          the nature and extent of service needs, the type  
17          and duration of services provided, the cost and  
18          outcome of such services, and any gaps in avail-  
19          able services, and

20                 "(iii) use (where available) valid and reliable  
21          instruments for collecting such data;

22          "(H) set forth procedures for—

23                 "(i) granting an opportunity for a timely  
24          appeal and a speedy hearing before an impartial  
25          hearing officer—

1           "(I) to any individual who believes him-  
2           self to be inappropriately served or who is  
3           denied an appropriate service, or who is  
4           being scheduled for transfer (other than  
5           under the provisions of paragraph (1) of this  
6           subsection and other than on such individ-  
7           ual's own initiative) from one living arrange-  
8           ment (including such individual's own home)  
9           to another, or

10           "(II) as appropriate, to the individual's  
11           spouse, parent, guardian, appropriate family  
12           member, or advocate acting on such individ-  
13           ual's behalf,

14           "(ii) giving written notice to affected parties  
15           at least 60 days before such proposed transfer  
16           except in an emergency, and

17           "(iii) advising individuals with severe disabil-  
18           ities, their families, and their advocates of avail-  
19           able alternative arrangements and services, of the  
20           right to choose among available licensed or certi-  
21           fied providers of services, and of the right to a  
22           fair hearing under section 1902(a)(3);

23           "(J) describe the methods to be used in adminis-  
24           tering community and family support services under  
25           the State plan, including—

1                   "(i) the specific roles and responsibilities of—  
2                         "(I) specified State and local govern-  
3                   mental agencies in establishing policies gov-  
4                   erning the provision of such services and in  
5                   providing such services (either directly or  
6                   under arrangements with other public or pri-  
7                   vate entities),  
8                         "(II) the agency responsible for provid-  
9                   ing protection and advocacy in accordance  
10                  with subsection (j), and  
11                  "(III) the community organizations and  
12                  agencies responsible for providing such serv-  
13                  ices, and  
14                  "(ii) the steps to be taken in recruiting and  
15                  selecting such provider organizations and  
16                  agencies;  
17                  "(K) set forth criteria to govern the use of psy-  
18                  chotropic and anti-convulsant medications and behavior  
19                  management techniques, as well as monitoring methods  
20                  to be used to ensure compliance with such criteria;  
21                  "(L) set forth the methods by which the number  
22                  and types of integrated work settings and the range of  
23                  supportive services available to individuals with a  
24                  severe disability who have attained the age of 18 are  
25                  developed and expanded; and

1           "(M) set forth the methods to assure that the pro-  
2 vision of specialized vocational services and education-  
3 ally-related services under this title to individuals with  
4 a severe disability is coordinated (by use, where neces-  
5 sary, of interagency agreements) with the activities of  
6 responsible State and local vocational rehabilitation  
7 and educational agencies (and other agencies as appro-  
8 priate); and

9           "(6) set forth methods and procedures to assure—

10           "(A) fair and equitable provisions (as deter-  
11 mined by the Secretary in consultation with the  
12 Secretary of Labor) to protect the interests of  
13 public employees who will be affected by the  
14 transfer of individuals with a severe disability  
15 from public institutions, including public medical  
16 institutions, to community or family living facili-  
17 ties under the implementation strategy, and that  
18 maximum efforts will be made to provide for the  
19 employment of such employees, including arrange-  
20 ments designed to preserve employee rights and  
21 benefits and arrangements to provide (where nec-  
22 essary) for the training or retraining of such em-  
23 ployees, and

24           "(B) application of fair employment standards  
25 and equitable compensation to workers in private

1           programs and facilities offering care and services  
2           for which payments are made under this title.

3       "(e) STATE MAINTENANCE OF EFFORT.—

4           "(1) A State meets the maintenance of effort re-  
5       quirement of this subsection for any quarter in a fiscal  
6       year in which community and family support services  
7       are provided if for such quarter the total amount of the  
8       funds expended by the State (and political subdivisions  
9       thereof) from non-Federal funds for these services for  
10      eligible individuals with a severe disability is at least  
11      equal to the base amount, increased by the inflation  
12      factor that applies with respect to the fiscal year in  
13      which such services are provided.

14          "(2) For purposes of paragraph (1)—

15                "(A) the term 'base amount' means the aver-  
16      age quarterly amount of the funds expended  
17      (during the four-quarter period ending Septem-  
18      ber 30, 1989) by the State (and political sub divi-  
19      sions thereof) from non-Federal funds under the  
20      plan for services that are community and family  
21      support services; and

22                "(B) the inflation factor that applies with re-  
23      spect to the fiscal year in which such services are  
24      provided is the amount (expressed as a percent-  
25      age) by which the Consumer Price Index for the

1           third quarter of the fiscal year preceding such  
2           fiscal year exceeds the Consumer Price Index for  
3           the third quarter of the second fiscal year preced-  
4           ing such fiscal year.

5           "(f) REVIEW BY COMPTROLLER GENERAL.—The  
6 Comptroller General of the United States shall, from time to  
7 time, review State plans approved by the Secretary pursuant  
8 to section 1902 in order to ensure the compliance of such  
9 plans with the provisions of this section and the Medicaid  
10 Home and Community Quality Services Act of 1989.

11          "(g) WAIVER OF STATEWIDE REQUIREMENT AND RE-  
12 QUIREMENT OF COMPARABILITY.—For any one three-year  
13 period, a State may provide any new service under this sec-  
14 tion without regard to the statewide requirement of section  
15 1902(a)(l) or the requirement of section 1902(a)(10)(B).

16          "(h) WAIVER OF FREEDOM OF CHOICE REQUIRE-  
17 MENT.—A State may provide case management services  
18 under this section without regard to the requirement of sec-  
19 tion 1902(a)(23) to the extent that the State determines that  
20 waiving such requirement is necessary to the effective and  
21 efficient provision of such services.

22          "(i) STATE ADMINISTRATION.—The Governor of each  
23 State may assign the responsibility for performing specified  
24 management functions regarding services provided to individ-  
25 uals with a severe disability under this section to State agen-



1       cies other than the agency administering the plan under this  
2       title”

3       (d) INTERMEDIATE CARE FACILITY SERVICES IN AN  
4       INSTITUTION FOR THE MENTALLY RETARDED.—Section  
5       1905(d) of the Social Security Act is amended—

6             (1) by striking out "a public" and inserting in lieu  
7       thereof "an";

8             (2) by striking out "and" at the end of paragraph  
9       (2); and

10            (3) by striking out paragraph (3) and inserting in  
11       lieu thereof the following:

12            "(3) the individual needs of each newly admitted  
13       individual are ascertained by an interdisciplinary team  
14       within 30 days, and an individual written habilitation  
15       plan is developed for the individual, including an as-  
16       sessment of such individual's needs for community and  
17       family support services; and

18            "(4) the institution, if not operated by the State,  
19       has a written agreement with an appropriate State  
20       agency to cooperate in carrying out the State imple-  
21       mentation strategy required to be submitted to the Sec-  
22       retary under section 1921(c)(1).".

23       (e) CONFORMING AMENDMENTS.—Section 1903(a)(2)  
24       of the Social Security Act is amended—

(1) by inserting after "professional medical personnel" the following: "or personnel skilled in the delivery of community and family support services needed by individuals with a severe disability"; and

(2) by inserting after "other public agency" the following "or any agency under contract to the State to provide services under section 1921".

SEC. 4. LIMITATION ON PAYMENTS FOR SERVICES PROVIDED  
IN LARGE FACILITIES.

Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(w) LIMITATION ON PAYMENTS FOR SERVICES PROVIDED IN LARGE FACILITIES.—

"(1)(A) Except as provided in paragraph (2), effective for any fiscal year beginning after the date of the enactment of the Medicaid Home and Community Quality Services Act of 1989, the aggregate amount payable under this title to any State for any quarter beginning in such fiscal year for skilled nursing facility services and intermediate care facility services furnished to any individual described in sub paragraph (C) in facilities having more than 15 beds shall not exceed 25 percent of the maximum expenditure amount determined with respect to the State under sub paragraph (B) for such fiscal year.

1           "(B)(i) For purposes of sub paragraph (A), the  
2           term 'maximum expenditure amount' means, with re-  
3           spect to a State for a fiscal year, an amount equal to  
4           the aggregate amount payable under this title to the  
5           State for the services described in sub paragraph (A) for  
6           the fiscal year ending after the date of the enactment  
7           of the Medicaid Home and Community Quality Serv-  
8           ices Act of 1989, increased by the percentage (if any)  
9           by which CPI percentage increase for the fiscal year  
10          exceeds 6.0 percent (and by any amounts expended for  
11          the fiscal year for which payment would otherwise be  
12          made under this title that are attributable to the cost of  
13          implementing a plan of correction which includes a re-  
14          duction plan approved under section 1919).

15          "(ii) For purposes of clause (i), the 'CPI percent-  
16          age increase' for a fiscal year is the amount (expressed  
17          as a percentage) by which the Consumer Price Index  
18          for the third quarter of the fiscal year preceding such  
19          fiscal year exceeds the Consumer Price Index for the  
20          third quarter of the second fiscal year preceding such  
21          fiscal year.

22          "(C) An individual described in this sub paragraph  
23          is an individual who—

24                  "(i) is under the age of 65, and

1           "(ii) who is under a disability within the  
2           meaning of section 1614(a)(3) of this Act, the  
3           onset of which occurred before the individual at-  
4           tained the age of 22.

5           "*(D)* For purposes of applying this subsection, ag-  
6           gregate amounts paid under this title shall be deter-  
7           mined without adjustments for amounts recovered from  
8           third parties considered as overpayments.

9           "(2) The limitation on payments in paragraph (1)  
10          shall not apply to any of the following payments for  
11          skilled nursing facility services or intermediate care fa-  
12          cility services provided in a facility which uncondition-  
13          ally meets all requirements applicable to such type of  
14          facility (including appropriateness of admissions):

15                "(A) Payments for such services for individ-  
16                uals in a facility which meets the size and location  
17                requirements for a community living facility.

18                "(B) Payments for such services for individ-  
19                uals in a facility which is in operation on Septem-  
20                ber 30, 1989, does not increase its number of  
21                beds after such date, and has no more than 15  
22                beds (exclusive of beds occupied by staff  
23                members).

1           "(C) Payments for such services for individ-  
2           uals in a facility treated as a community living fa-  
3           cility under section 1905(v)(2).

4       SEC. 5. PROTECTION OF RIGHTS OF INDIVIDUALS WITH A  
5           SEVERE DISABILITY.

6       Section 1921 of the Social Security Act (as added by  
7       section 3(c) of this Act) is amended by adding at the end  
8       there of the following new subsection:

9       "(j) PROTECTION OF RIGHTS.—

10           "(1) Subject to paragraph (3), in order to receive  
11           any payments for community and family support serv-  
12           ices provided under this section, the State must have  
13           in effect a system to protect and advocate those rights  
14           of individuals with a severe disability who are eligible  
15           for medical assistance which relate to the provision of  
16           such assistance.

17           "(2) Such system must be implemented by an  
18           agency which—

19                   "(A) is independent of any agency which  
20           provides services to individuals with a severe dis-  
21           ability under the State plan;

22                   "(B) has the authority to pursue legal, ad-  
23           ministrative, and other appropriate remedies to  
24           insure the protection of the rights of individuals

1 with a severe disability who are eligible for medi-  
2 cal assistance; and

3 "(C) has the authority to obtain access to  
4 records of individuals with a severe disability who  
5 are eligible for medical assistance in order to  
6 carry out such agency's duties under this sub-  
7 section.

8 "(3)(A) In the case of a State that has in effect a  
9 system for providing protection and advocacy under  
10 part C of the Development Disabilities Assistance and  
11 Bill of Rights Act, such State shall take appropriate  
12 steps to ensure that such existing system is used to  
13 perform the protection and advocacy functions required  
14 by this section.

15 "(B) The State must provide assurances to the  
16 Secretary that the amounts paid to the State under  
17 this title that are attributable to the use of the system  
18 in effect under part C of such Act shall be used only  
19 for the purposes of providing protection and advocacy  
20 relating to the provision of medical assistance to indi-  
21 viduals with a severe disability.

22 "(4) For purposes of section 1903(a)(1), amounts  
23 expended by the State under this subsection shall be  
24 treated as amounts expended as medical assistance  
25 under the State plan."

1 SEC. 6. PRIVATE ENFORCEMENT.

2 Section 1921 of the Social Security Act (as added by  
3 section 3(c) of this Act and amended by section 5 of this Act)  
4 is further amended by adding at the end thereof the following  
5 new subsection:

6 "(k) PRIVATE ENFORCEMENT.—

7 "(1)(A) Except as provided in paragraph (3), any  
8 person injured or adversely affected or aggrieved by a  
9 violation of this section, or of the Medicaid Home and  
10 Community Quality Services Act of 1989, by a State  
11 agency administering the State plan may bring an  
12 action to enjoin such violation.

13 "(B) An action brought under this paragraph shall  
14 be brought in the appropriate district court of the  
15 United States within the State in which such State  
16 plan is in operation.

17 "(C) The party bringing such action may elect, by  
18 so stating in the complaint filed at the commencement  
19 of such action, to recover reasonable attorney's fees  
20 and costs from the defendant in the event that such  
21 party prevails.

22 "(2) Not less than 15 days before commencing an  
23 action under this subsection, an interested party shall  
24 give notice by registered mail to the Secretary, the At-  
25 torney General of the United States, and the State  
26 agency administering the State plan alleged to be in

1 violation of this section or of the Medicaid Home and  
2 Community Quality Services Act of 1989. Such notice  
3 shall state the nature of the alleged violation and the  
4 court in which such action will be brought.

5 "(3) The approval of the State plan under section  
6 1902(b) shall not be a bar to the bringing of an action  
7 under this subsection, nor shall it constitute a defense  
8 to any such action."

9 SEC. 7. RATES OF PAYMENT FOR SERVICES.

10 Section 1902(a)(13) of the Social Security Act is amend-  
11 ed by striking out "and" at the end of sub paragraph (D), by  
12 adding "and" at the end of sub paragraph (E), and by adding  
13 at the end thereof the following new sub paragraph:

14 "(F) for payment for community and family  
15 support services for individuals with a severe dis-  
16 ability, described in section 1921 and provided  
17 under the plan, through the use of rates (deter-  
18 mined in accordance with methods and standards  
19 developed by the State) which the State finds, and  
20 makes assurances satisfactory to the Secretary,  
21 are reasonable and adequate to assure the provi-  
22 sion of care and service in conformity with appli-  
23 cable State and Federal laws and regulations, and  
24 applicable quality and safety standards, and to  
25 assure that individuals with a severe disability eli-



gible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time for family and friends) to community and family support services of adequate quality;".

SEC. 8. MEDICAID ELIGIBILITY OF CERTAIN INDIVIDUALS  
WITH A SEVERE DISABILITY.

(a) OPTIONAL ELIGIBILITY.—Section 1902 of the Social Security Act is amended by redesignating the subsection (1) added by section 3(b) of the Employment Opportunities for Disabled Americans Act as subsection (o) and by inserting after such subsection the following new subsection:

"(p) ELIGIBILITY OF CERTAIN INDIVIDUALS WITH A SEVERE DISABILITY.—

"(1) At the option of the State, any individual who has not attained the age of 19 and who—

"(A) qualifies as a disabled individual under section 1614(a),

"(B) as determined by the State, is an individual who requires (or whose family requires) community and family support services, and

"(C) if the individual were in a medical institution, would be an individual with respect to whom supplemental security benefits (or a State

1 supplementary payment) could be paid under title  
2 XVI;  
3 shall be deemed, for purposes of this title only, to be  
4 an individual with respect to whom a supplemental se-  
5 curity income payment, or State supplementary pay-  
6 ment, respectively, is being paid under title XVI.

7 "(2) A State electing the option under paragraph  
8 (1) shall set forth in its State plan and its State imple-  
9 mentation strategy (submitted to the Secretary under  
10 section 1921(c)(1)) the criteria which the State will use  
11 in identifying eligible individuals or reasonable classifi-  
12 cations of such individuals, and the extent of the serv-  
13 ices for which payment may be authorized under this  
14 subsection."

15 (b) EXEMPTION FROM FAMILY INCOME LIMITA-  
16 TION.—Section 1903(f)(4) of such Act is amended—

17 (1) by adding "or" at the end of sub paragraph  
18 (C); and

19 (2) by inserting after sub paragraph (C) the follow-  
20 ing new sub paragraph:

21 "(D) who meets the requirements of section  
22 1902(p),".

23 (c) UNIFORM INCOME STANDARD, AND EXPANDED  
24 ELIGIBILITY.—Section 1902(a)(10)(A)(ii) of such Act is  
25 amended—

1           (1) by inserting before the comma at the end of  
2           sub clause (V) the following new matter: ": *Provided*,  
3           That if the State establishes such a separate income  
4           standard for individuals who are in any medical institu-  
5           tion, the State must establish the same separate  
6           income standard for all individuals with a severe dis-  
7           ability,"

8           (2) by striking out "or" at the end of sub clause  
9           (IX);

10          (3) by striking out the semicolon at the end of  
11          sub clause (X) and inserting in lieu thereof ", or"; and

12          (4) by adding at the end thereof the following:

13                       "(XI) who are disabled children or  
14                       disabled spouses who, except for re-  
15                       sources deemed to them, would be eligi-  
16                       ble for supplementary security income  
17                       benefits under title XVI;"

18          (d) ELIGIBILITY OF DISABLED CHILD.—Section  
19          1634(c)(l) of such Act is amended by striking out "the effec-  
20          tive date of this subsection" and inserting in lieu thereof  
21          "January 1, 1957".

1 SEC. 9. REMOVAL OF CERTAIN LIMITATIONS ON REDUCTION  
2 AND CORRECTION PLANS FOR INTERMEDIATE  
3 CARE FACILITIES FOR THE MENTALLY RE-  
4 TARDED.

5 Section 1919 of the Social Security Act is amended—  
6 (1) in subsection (d)—  
7 (A) by striking "(d)(l)" and inserting in lieu  
8 thereof "(d)", and  
9 (B) by striking paragraph (2); and  
10 (2) by striking subsection (f).

11 SEC. 10. SPECIAL ELIGIBILITY EXCEPTION FOR INDIVIDUALS  
12 WITH A SEVERE DISABILITY.

13 Section 1902(f) of the Social Security Act is amended:

14 (1) by inserting "(1)" after the subsection designa-  
15 tion;

16 (2) by inserting "paragraph (2)," before "subsec-  
17 tion (e)"; and

18 (3) by adding at the end thereof the following new  
19 paragraph:

20 "(2) Notwithstanding paragraph (1), an individual with  
21 a severe disability receiving benefits under title XVI or  
22 deemed to receive such benefits under this title shall be enti-  
23 tied to receive medical assistance as long as such individual  
24 remains severely disabled and continues to receive benefits  
25 under title XVI or is deemed to receive benefits under this  
26 title."

1        SEC. 11. RESPONSIBILITIES OF THE SECRETARY.

2        (a) ESTABLISHMENT OF A BUREAU OF DEVELOPMEN-  
3        TAL DISABILITIES SERVICES.—

4            (1) The Secretary of Health and Human Services  
5        (referred to in this section as the "Secretary") shall es-  
6        tablish, within the Health Care Financing Administra-  
7        tion, a Bureau of Developmental Disabilities Services  
8        (referred to in this subsection as the "Bureau"). The  
9        Bureau shall be the principal office in the Department  
10       of Health and Human Services for administering and  
11       carrying out programs under title XIX of the Social  
12       Security Act relating to the furnishing of quality serv-  
13       ices to individuals with a severe disability in order to  
14       promote their independence, productivity, and integra-  
15       tion into the community, and to provide coordinated  
16       leadership, guidance, and support to assist States in  
17       developing such services.

18           (2) The Bureau shall be headed by a Director  
19        who shall be appointed by the Secretary in consultation  
20        with the Administrator of the Health Care Financing  
21        Administration. The position of Director shall be  
22        placed in Level IV of the Executive Schedule in sec-  
23        tion 5318 of title 5, United States Code and shall be  
24        designated a career reserved position in the Senior Ex-  
25        ecutive Service. The Director shall have training and

1 experience in the furnishing of services to individuals  
2 with developmental disabilities.

3 (3) The additional staffing of the Bureau shall be  
4 in sufficient numbers to meet program needs, and at  
5 levels which shall attract and maintain the most quali-  
6 fied personnel. Such personnel shall include individuals  
7 who have training and experience in the provision of  
8 services to individuals with developmental disabilities.

9 (4) The Bureau shall be established and staffed  
10 not later than 6 months after the date of enactment of  
11 this Act.

12 (5) The Bureau shall be responsible for—

13 (A) preparing all necessary regulations and  
14 other administrative policies governing the provi-  
15 sion of services under sections 1921 (as added by  
16 this Act), 1905(d), and 1915(c) of the Social Se-  
17 curity Act as such services relate to individuals  
18 with a severe disability;

19 (B) coordinating the activities of responsible  
20 regional office personnel related to the provision  
21 of services to individuals with a severe disability  
22 under titles XVIII and XIX of the Social Secu-  
23 rity Act;

24 (C) conducting periodic studies to determine  
25 the consistency, reliability, and validity of surveys

1 of intermediate care facilities certified or request-  
2 ing certification under section 1905(d) conducted  
3 under section 1902(a)(33)(B) of such Act (and,  
4 based on such studies, developing policies and  
5 procedures governing such surveys);

6 (D) preparing and issuing policies governing  
7 the conduct of utilization reviews under section  
8 1902(a)(30)(A) of the Social Security Act, onsite  
9 inspections of care under section 1902(a)(31)(B) of  
10 such Act, and the preparation of professional  
11 review reports under section 1902(a)(31)(C) of  
12 such Act (as such reports pertain to care provided  
13 in facilities certified or requesting certification  
14 under section 1905(d) of such Act);

15 (E) advising the Administrator of the Health  
16 Care Financing Administration on all aspects of  
17 policies that may impact upon individuals with a  
18 severe disability and recommending (in consulta-  
19 tion with such Administrator) policy initiatives  
20 and modifications necessary to improve services  
21 provided under titles XVIII and XIX of the  
22 Social Security Act in order to promote the inde-  
23 pendence, productivity, and integration of such in-  
24 dividuals (as such terms are defined under section  
25 1905(dd) of the Social Security Act);

1 (F) developing policies and procedures gov-  
2 erning the conduct of periodic assessments of the  
3 status of individuals with a severe disability who  
4 are receiving services under any title of the Social  
5 Security Act;

6 (G) reviewing State compliance with the pro-  
7 visions of, and amendments made, by this Act in  
8 such periodic and random fashion as the Bureau  
9 deems necessary, making recommendations to the  
10 Secretary based on such reviews; and

11 (H) performing such other functions relating  
12 to the provision of services to individuals with a  
13 severe disability as the Secretary may assign (in-  
14 cluding any function related to a responsibility of  
15 the Secretary under subsection (b), (c), (d), or (e)  
16 of this section).

17 (b) TRAINING OF SURVEY PERSONNEL.—The Secre-  
18 tary shall—

19 (1) with respect to Federal and State personnel  
20 who perform surveys under sections 1902(a)(33)(B) and  
21 1910(c)(1) of the Social Security Act of facilities that  
22 are certified under section 1905(d) of such Act—

23 (A) not later than 18 months after the date  
24 of enactment of this Act, develop a standardized  
25 curriculum for training such personnel which



1 places particular emphasis on valid and reliable  
2 methods for assessing the provision of active  
3 treatment provided to residents of such facilities in  
4 accordance with standards prescribed by the  
5 Secretary;

6 (B) in accordance with the curriculum devel-  
7 oped under sub paragraph (A), design and initiate  
8 a comprehensive training program for such per-  
9 sonnel which provides—

10 (i) initial training not later than 30  
11 months after the date of enactment of this  
12 Act in the case of personnel assigned to  
13 survey such facilities on or before the date of  
14 enactment of this Act,

15 (ii) initial training not later than six  
16 months after the date on which personnel are  
17 assigned to survey such facilities in the case  
18 of personnel assigned to survey such facilities  
19 after the date of enactment of this Act, and

20 (iii) continuing education to such per-  
21 sonnel at least every 36 months; and

22 (C) develop standards regarding the qualifica-  
23 tions of such personnel, including a standard re-  
24 quiring that at least one member of any survey

1 team be a qualified developmental disabilities pro-  
2 fessional (as defined by the Secretary);

3 (2) on the basis of a randomly selected sample of  
4 Federal and State surveys conducted, periodically con-  
5 duct studies of the reliability of survey findings to de-  
6 termine the compliance of facilities certified under sec-  
7 tion 1905(d) of the Social Security Act with the stand-  
8 ards prescribed by the Secretary under paragraph (1)  
9 of such section;

10 (3) make such changes in Federal regulations, ad-  
11 ministrative policies or procedures (or initiate such spe-  
12 cialized training programs) as are—

13 (A) consistent with the findings of studies  
14 conducted under paragraph (2), and

15 (B) necessary to improve the reliability and  
16 consistency of survey findings and certification de-  
17 cisions with respect to facilities certified under  
18 section 1905(d); and

19 (4) with respect to Federal and State personnel  
20 who perform surveys regarding State compliance with  
21 the provisions of, and amendments made, by this Act,  
22 design and initiate a comprehensive training program  
23 for such personnel that provides for an amount of  
24 training at least equal to that described in paragraph  
25 (1)(B).

1 (c) DEVELOPMENT, TESTING, AND DISSEMINATION OF  
2 INSTRUMENTS AND STANDARDS.—

3 (1) Subject to paragraph (2), the Secretary shall  
4 support the development, field testing, and dissemina-  
5 tion of—

6 (A) reliable and valid instruments to assess  
7 service outcomes in the provision of care and  
8 services under this Act, including outcomes in  
9 such areas as community integration, individual  
10 and family satisfaction, and the impact of environ-  
11 mental factors; and

12 (B) competency-based personnel standards  
13 with respect to every agency or organization in-  
14 volved in providing services to individuals with a  
15 severe disability for which any payment is made  
16 as a result of the amendments made by this Act.

17 (2) Nothing in paragraph (1) shall be construed to  
18 allow the Secretary to require that a State use a spe-  
19 cific outcome indicator or personnel standard selected  
20 by the Secretary.

21 (d) ASSESSMENT OF STATE COMPLIANCE WITH  
22 STATE IMPLEMENTATION STRATEGY.—

23 (1) Beginning with the first fiscal year beginning  
24 after the date of enactment of this Act, the Secretary,  
25 after consultation with the Secretary of Education and

1 study of any recommendations made by the Bureau of  
2 Developmental Disabilities under subsection (a)(5)(G),  
3 shall conduct an annual assessment of each State's—

4 (A) compliance with the provisions of section  
5 1921(c) of the Social Security Act (as added by  
6 section 3(c) of this Act); and

7 (B) progress in carrying out its implementa-  
8 tion strategy (required to be submitted under sec-  
9 tion 1921(c)(1) of such Act), including the steps  
10 taken to—

11 (i) expand the quantity and improve the  
12 quality of community and family support  
13 services;

14 (ii) develop essential support services  
15 necessary to maintain a responsive network  
16 of community and family support services  
17 (including the provision of training, technical  
18 assistance, and crisis intervention services);  
19 and

20 (iii) promulgate standards governing  
21 community and family support services and  
22 monitor compliance and take necessary steps  
23 to enforce such standards.

24 (2) The Secretary shall conduct annual assess-  
25 ments of the adequacy of the quality assurance compo-

1 nents established by States under such implementation  
2 strategy. Such assessments shall include a review of  
3 community and family support services provided pursu-  
4 ant to such strategy and visits to community living fa-  
5 cilities and entities providing such services.

6 (3) Nothing in this subsection shall be construed  
7 to require the approval of the Secretary of any State  
8 implementation strategy submitted under section  
9 1921(c)(1) of the Social Security Act, if such strategy  
10 meets the requirements of section 1921(d) of such Act  
11 (as added by section 3(c) of this Act).

12 (e) REPORT.—Not later than January 15, 1994, and  
13 biennially thereafter, the Secretary shall submit a report to  
14 Congress that is based on the assessments, studies, and other  
15 activities conducted under subsections (b), (c), and (d) (and  
16 such other information as the Secretary may gather). Such  
17 report shall contain an analysis of the findings of such assess-  
18 ments, studies, and activities, a description of all relevant  
19 fiscal, programmatic, and demographic data, and recommen-  
20 dations regarding the need for any changes in Federal law.

21 (f) REGULATIONS.—

22 (1) Prior to the first fiscal year beginning after the  
23 date of enactment of this Act, the Secretary shall issue  
24 final regulations with respect to all amendments to the  
25 Social Security Act made by this Act, including regula

1        tions which govern the preparation, public review, dis-  
2        tribution, and annual revision of the State implementa-  
3        tion strategy (required to be submitted to the Secretary  
4        under section 1921(c)(1) of the Social Security Act, as  
5        added by section 3(c) of this Act).

6            (2) Nothing in this subsection shall be construed  
7        to authorize the Secretary to promulgate standards  
8        governing the provision of community and family sup-  
9        port services.

10           (3) Nothing in this subsection shall be construed  
11        to prohibit payments under section 1903 of the Social  
12        Security Act prior to the issuance of regulations under  
13        this subsection to States which comply with the re-  
14        quirements of the amendments made to the Social  
15        Security Act by this Act.

16    SEC. 12. EFFECTIVE DATE.

17        This Act and the amendments made by this Act shall  
18        apply with respect to fiscal years beginning after the date of  
19        enactment of this Act.